Nova Scotia

REPORT OF THE ELECTION COMMISSION

FEBRUARY 1983

ELECTION COMMISSION
PROVINCE OF NOVA SCOTIA

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February 16, 1983

The Honourable Arthur R. Donahoe, Q.C.
Speaker of the House of Assembly
Province of Nova Scotia
Halifax, Nova Scotia

Dear Mr. Speaker:

I have the honour to submit the first report of the Election Commission established pursuant to Section 6A of the Elections Act.

Respectfully yours,

Bruce M. Nickerson
Chairman

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1983

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ELECTION COMMISSION

In February, 1981, the Report to the House of Assembly of the Select Committee on Electoral Matters was tabled. In its report, the Select Committee recommended the creation of a commission to "make determinations with respect to prosecutions in a manner which should avoid suspicion of partisan influence" and to "provide advice to election officers relating to the general administration of elections". Later in that Session, the Government introduced a Bill amending the Elections Act. The Bill was passed and became Chapter 21 of the Acts of 1981. It enacted subsection 6A(1) of the Elections Act which provides:

> (1) There shall be a commission to be known as the "Election Commission" which shall
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> (a) consider reports of investigations by the Chief Electoral Officer or police officers concerning alleged violations of the Elections Act for the purpose of determining whether there should be prosecutions;
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> (b) advise the Chief Electoral Officer regarding the administrative conduct of elections.

In accordance with the provisions of the Elections Act, the Governor in Council appointed Bruce M. Nickerson, Q.C., to be Chairman of the Commission. The Honourable John M. Buchanan, Q.C., as Leader of the Progressive Conservative Party, appointed Mr. Kenneth M. Matthews, Q.C., and Mr. Donald H. Oliver, Q.C., to be members of the Commission. Mr. A.M. (Sandy) Cameron, the Leader of the Opposition, appointed Mr. C. Peter McLellan and Mr. Arthur W.D. Pickup to be members of the Commission. Mr. D. William MacDonald, the Chief Electoral Officer, is also a member of the Commission by virtue of his office.

The Election Commission held its first meeting on November 27, 1981, and it met 11 times between that day and the submission of this report.

The Commission decided that its rules of procedure should be the same as the rules that govern the deliberations of a Select Committee of the House of Assembly as set out in the Rules and Forms of Procedure of the House of Assembly adopted by the House on May 26, 1980, as they may be amended from time to time. It was decided that a special rule should be made regarding reconsideration by the

Commission of a decision and the following rule was agreed upon:

> A motion to reconsider a Commission decision shall carry only if it is passed by at least two thirds of the members present; and such motion may only be made if
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> > (a) written notice has been delivered or mailed to all members of the Commission at least seven days before the meeting at which the motion of reconsideration is to be put; or
> >
> > (b) oral notice of reconsideration is given at a duly constituted meeting of the Commission taking place not less than seven days before the meeting at which the motion of reconsideration is to be put.

Prosecutions

The Commission's first meeting took place soon after the general election held on October 6, 1981. The Attorney General forwarded two police reports respecting investigations arising from that election. Neither of the reports recommended a prosecution and the Commission agreed that none was necessary.

Members of the Commission hold the view that in cases where there is evidence to support allegations of violations of the Act, consent should be given to prosecutions. It is desirable that all participants in the democratic process abide by legal requirements. If the Commission is not firm in this resolve, individuals may be encouraged to bend or break the rules which are designed to ensure fair elections.

Administrative Conduct of Elections

At its first meeting, the Chief Electoral Officer told the Commission that he would be grateful for advice respecting the revision of instructions printed and issued to election officers and respecting the contents of the statutory report which the Chief Electoral Officer may submit to the House of Assembly. Following recent general elections, it has been the practice for the Chief Electoral Officer to submit a statutory report suggesting amendments to the Elections Act which are desirable for the more convenient administration of the Act.

At several meetings the Commission considered problem areas which were brought to the attention of the Commission by the Chief Electoral Officer. The Commission also invited submissions from the Progressive Conservative Association of Nova Scotia, the Nova Scotia Liberal Party and the Nova Scotia New Democratic Party. The Commission is grateful for the efforts of those who made submissions in response to that request.

Members of the Commission have reached conclusions regarding several of the matters which have been considered. These conclusions are contained in this report. In addition, other matters have been considered by the Commission and require further study before conclusions are possible. This report refers to those matters and members of the Commission would be pleased to receive written comments regarding those subjects from any interested person.

LISTS OF ELECTORS

Clause 37(1)(c) of the Elections Act requires enumerators to show the sex of each elector by marking "M" or "F" beside the elector's name on the list. In urban areas, lists of electors are prepared geographically according to the street addresses and it is therefore possible to determine from the lists of electors whether a person is living alone or with others. Concern has been expressed that the designation of electors by sex might be used by a criminal to identify a victim such as a female living alone.

During the period of the election held on October 6, 1981, there were several sexual assaults reported in the City of Halifax and the Chief Electoral Officer advised the Commission that he received complaints from women who feared that the lists of electors could place them in jeopardy. Less concern might be experienced if the list of electors did not show the sex and if enumerators were instructed to use only initials and not names on the list where the elector does not wish his or her sex to be apparent.

Recommendation

1. Repeal provisions of the Elections Act which require the sex of an elector to be shown on the list of electors.

STUDENT VOTING

In order to be eligible as an elector, a person must be "ordinarily resident" in the Province for six months

immediately preceding the date of the Writ and in the polling division on the date of the Writ. Ordinary residence is based on the facts in each case. The Elections Act provides guidelines in Sections 27 and 28.

A student is entitled to have his or her residence determined in the same manner as any other person. In addition, in some circumstances students have available special rules. Subsection 27(5) permits a student, who is registered and in attendance at an educational institution at the time when an election is called, to be listed on the list of electors where his or her family home is located and on the list of electors where he or she lives while attending the educational institution. The timing of an election is important in determining whether this subsection is applicable. For example, in 1978 and in 1981 the general elections were called during August before students were in attendance at educational institutions and therefore the subsection did not operate.

Subsection 27(6) provides:

> Where a person is an unmarried student having a family home in the Province to which, when away, he intends to return, he is ordinarily resident where that home is.

The key factor in the above subsection is the "intention" of the student. An unmarried student who intends to return to his or her family home may be included on the list of electors there even if the student has not been living and sleeping there for some period of time. On the other hand, the subsection does not preclude an unmarried student, who does not intend to return to his or her family home, from establishing a "residence" where he or she is attending an educational institution.

The definition of "ordinarily resident", as it applies to students, varies from jurisdiction to jurisdiction in Canada. However, most jurisdictions retain a degree of flexibility which conforms to the intention of the student.

While some of the uncertainty may be resolved if the definition of ordinary residence is amended to be more precise, such an amendment would likely render the definition more rigid and, therefore, may create new problems.

Unmarried students are now permitted to vote by proxy. However, there are several objections to the proxy voting system as it applies to students.

1. Proxy voting does not permit a student, who may be voting for the first time, to mark the ballot himself or herself.

2. A student may not wish to have a parent or other person know how he or she wishes to vote.

3. The process of obtaining and completing an application for a proxy vote, having it certified by the Registrar, forwarding it to the person who will exercise the proxy so that a proxy paper can be issued by the returning officer, is too cumbersome.

Members of the Commission recommend a new voting system for students. Polling stations should be established on each university and college campus in Nova Scotia. At these polling stations, students should be permitted to vote for candidates in their home constituencies throughout the Province. For example, a student attending Dalhousie University who ordinarily resides in Glace Bay would be permitted to vote on the Dalhousie campus for one of the candidates in Cape Breton East. However, we do not wish students living at home to have a preferred status, that is having the choice to vote in their home polling stations or on campus. Therefore, we do not think the procedure should apply to constituencies in the county in which the educational institution is located. Using the Dalhousie example, we do not think a polling station should be set up on the Dalhousie campus for any constituency located in Halifax County (including all Halifax and Dartmouth constituencies).

Particulars of the proposed system are as follows:

(a) During a general election or by-election taking place while the educational institution is in session, polling stations will be established on the campus of each university and college in Nova Scotia which has student residence facilities on campus.

(b) All students attending the educational institution, who are qualified to vote in constituencies outside the county where the institution is located, will be permitted to vote at the campus polling station.

(c) A student voting at a campus polling station must vote for one of the candidates in the constituency where the student ordinarily resides.

(d) To establish his or her right to vote at the campus polling station, the student will have to

(i) complete a declaration stating his or her eligibility to vote;

(ii) produce a student identity card issued by the institution; and

(iii) satisfy the deputy returning officer as to the constituency in which he or she is eligible to vote by producing a driver's license, or other identification, showing an address in the constituency, or by producing a certificate issued by the Registrar showing the home address of the student as disclosed in the records of the institution.

(e) No list of electors will be used at the campus polling station, but the names of all students who vote there will be recorded in poll books.

(f) To discourage students from voting more than once, only one polling station on each campus will be available for an electoral district. For example, all Dalhousie students who ordinarily reside in Glace Bay, and who are therefore eligible to vote for a candidate in Cape Breton East, will vote at the same polling station.

(g) Voting at campus polling stations will take place on the same day and during the same hours as the special poll.

(h) The special poll is conducted on Thursday and Friday, the twelfth and eleventh days before ordinary polling day between 12:00 noon and 9:00 p.m., and on Saturday, the tenth day before ordinary polling day between 9:00 a.m. and 5:00 p.m.

(i) Since regular ballots will not be printed in time, "write in" ballots will be provided.

(j) Before a ballot is placed in the ballot box, it will be sealed in a plain envelope (inner envelope) and that envelope will be sealed in another envelope (outer envelope) bearing the name of the electoral district to which it applies and the name and home address of the student voter.

(k) Ballots will be taken from ballot boxes at the close of voting at the campus polls and will be sorted by electoral district.

(l) The Chief Electoral Officer will cause campus ballots to be distributed to the returning officer in each electoral district before the advance poll opens.

(m) The returning officer who receives campus ballots will cross off the names of the students listed on the outer envelopes if those names appear on the list of electors for that constituency.

(n) Whether or not the names of the students appear on the list of electors, the returning officer will then remove the inner envelopes from the outer envelopes and will place the envelopes together for safe keeping until they can be counted with the ballots marked at the special poll in the electoral district.

(o) If campus ballots are placed in improperly marked envelopes or for any other reason are delivered to the wrong returning officer, the Chief Electoral Officer will cause them to be taken to the correct electoral district between ordinary polling day and official addition day so that they can be counted at the official addition.

(p) If this new system is adopted, it follows that subsection 27(5) of the Elections Act, which permits a student to be listed on two separate lists of electors, should be repealed.

(q) Provision for proxy voting by students should be retained because students at educational institutions outside Nova Scotia may still wish to vote by proxy.

Recommendation

2. Amend the Elections Act to provide for student voting at campus polling stations during general elections or by-elections.

PROXY VOTING

Subsection 94(1) of the Elections Act permits a child, grandchild, brother, sister, parent, grandparent, husband or wife of an elector, who is in a home for the aged approved or a nursing home licensed under the Homes for Special Care Act, to act as the proxy voter for the elector in the home. In all other cases, both the proxy voter and the elector must be on the same list of electors, which means they must reside in the same polling division.

Members of the Commission prefer family members rather than strangers to act as proxy voters. Therefore, the

Commission has concluded that family members should be able to vote by proxy for any elector eligible to vote by proxy whether or not that family member is on the same list of electors. However, the family member must be entitled to be registered as an elector at a general election in Nova Scotia. In other words, a child or grandchild who is less than eighteen years of age should not be permitted to be a proxy voter.

The Chief Electoral Officer reported that he received complaints during the 1981 election from persons employed on offshore oil rigs who were required to be on the job during the entire time when voting took place at the special poll, the advance poll and on ordinary polling day. In some cases, workers on offshore rigs work two weeks on and two week off. In other cases, workers on offshore rigs work three weeks on and three weeks off. The special poll takes place on the tenth, eleventh and twelfth days before ordinary polling day so all voting is done in less than a two week period.

The Commission concluded that workers on offshore oil rigs, and on production platforms when they are in place, should be permitted to vote by proxy. It was noted that the provision relating to a "fisherman or mariner" now refers to service in any capacity "on a ship, licensed or registered in Canada or the British Commonwealth". Offshore oil rigs in place near mainland Nova Scotia are not generally registered in Canada or the British Commonwealth. Therefore, when this amendment is made the employees on an offshore oil rig or production platform should be referred to in a separate clause, or the clause relating to fishermen and mariners should be amended to read "a fisherman or mariner or other person serving in any capacity on a ship or on an offshore oil rig or production platform". The Commission prefers the latter approach.

Recommendations

3. If a child, grandchild, brother, sister, parent, grandparent, husband or wife is qualified to be an elector in a Provincial election, that member of an elector's family should be permitted to vote by proxy for any elector eligible to vote by proxy, whether or not the family member and the elector are on the same list of electors.

4. Clause 93(a) of the Elections Act should be amended to permit an elector to vote by proxy if he or she is a fisherman or mariner or other person serving in any capacity on a ship or on an offshore oil rig or production platform.

SPECIAL POLL

In 1981, adopting recommendations of the Select Committee on Electoral Matters, the Legislature enacted Sections 138A to 138H in the Elections Act to provide for an additional advance poll to be known as a "special poll".

New procedures used at the special poll worked quite well. The Chief Electoral Officer reported that more than 3,000 persons voted at the special poll during the 1981 general election.

The special poll is conducted at about the same time as the revising officer is sitting to make changes in the list of electors. Because the list of electors is not finalized, a person voting at the special poll must place his or her name on an outer envelope and the ballot is sealed in an unmarked, inner envelope. The votes are counted on ordinary polling day and at that time the names are checked against the revised list of electors. Therefore, it is possible for a person who is not on the list of electors to vote at the special poll and, if that happens, the ballot will be rejected later on. To minimize this problem, persons presiding at a special poll were asked to check the names of voters against the printed list of electors then available and, if the name of a voter was not on a list, the voter was informed so that he or she could appear before the revising officer.

However, the revising officer does not sit during all the hours of the special poll. In particular, the revising officer's sittings have concluded before the voting at the special poll on Saturday. The special poll is open on the twelfth, eleventh and tenth days before polling day during the following hours:

Thursday - 12:00 noon - 9:00 p.m.
Friday - 12:00 noon - 9:00 p.m.
Saturday - 9:00 a.m. - 5:00 p.m.

The revising officer sits on the twelfth and eleventh days before ordinary polling day during the following hours:

Thursday - 11:00 a.m. - 1:00 p.m.
2:00 p.m. - 6:00 p.m.
7:00 p.m. - 9:00 p.m.
Friday - 11:00 a.m. - 1:00 p.m.
2:00 p.m. - 6:00 p.m.
7:00 p.m. - 9:00 p.m.

If an elector whose name is not on the printed list of electors wishes to vote at the special poll on Saturday, he

or she cannot do so because the revising officer's sittings have been concluded and the ballot will be rejected if the name of the voter is not on the list of electors.

The Commission recommends that the days and hours of the sittings of a revising officer be changed to correspond exactly with the days and hours of the special poll.

The special poll is established in the office of each returning officer and, if the Chief Electoral Officer so directs, at additional locations in large constituencies. Subsection 138A(4) provides that the special poll is conducted by a "presiding officer" who is the returning officer or the election clerk or, where the Chief Electoral Officer so authorizes, a person appointed by the returning officer to conduct the special poll.

Many, and perhaps most, returning officers would prefer to have presiding officers appointed to conduct the special poll, rather than do it themselves. In several electoral districts during the 1981 election there were two presiding officers appointed. Following the same procedure for appointing personnel at the advance and ordinary polls, the returning officer asked the government political organization to nominate persons to be presiding officers. A potential problem exists at a special poll because the other political parties did not generally have agents present, and so it was conducted by nominees from one political party acting alone. In at least one case, a returning officer was sufficiently uncomfortable with this arrangement that he felt it necessary to remain at his headquarters himself or have his own election clerk present there throughout the special poll in order to maintain the appearance of neutrality.

The Commission recommends that where presiding officers are to be appointed for the special poll, two should be appointed. One of the two persons should be designated as a deputy returning officer and the other should be designated as the poll clerk. The returning officer should ask the government political organization to nominate the deputy returning officer and the poll clerk should be nominated by the party, other than the government political organization, having the highest number of votes in the district at the last election. This would resolve the potential difficulty if agents are not sitting at the special poll throughout voting hours.

Some returning officers, particularly those who have their headquarters in their own homes, prefer to conduct this special poll themselves. The returning officer should have this choice. The appointment of a deputy returning

officer and poll clerk for this special poll should be at the option of the returning officer.

Recommendations

5. The revising officer's sittings should correspond with the hours of the special poll.

6. Subsection 138A(4) of the Elections Act should be amended to provide for the appointment of a deputy returning officer and a poll clerk for the special poll, at the option of the returning officer.

7. Where a deputy returning officer and a poll clerk are to be appointed for the special poll, the deputy returning officer should be nominated by the government political organization and the poll clerk should be nominated by the recognized party, other than the government political organization, having the highest number of votes in the constituency.

ACCESSIBILITY OF POLLING STATIONS

Section 83 of the Elections Act requires a polling station to "be in premises of convenient access" and Section 84 requires at least one or more polling stations in electoral districts to be in premises which permit convenient access to physically disabled persons. A physically disabled person can obtain a transfer certificate so that he or she can vote at the accessible poll.

There is no requirement for the accessible poll to be located at a convenient place. Therefore, it is possible that a disabled person may have to travel a great distance to get to the accessible poll. The Commission recommends that the Act should be amended to add a requirement for the accessible poll to be at a convenient location.

The Elections Act does not make specific reference to the need for an advance poll to be in an accessible place. There is such a requirement in subsection 91(6) of the Canada Elections Act which provides:

> (6) A returning officer shall
>
> (a) where possible, locate an advance polling station at a place in a building that will provide ease of access to any elector who is confined to a wheel chair or otherwise incapacitated or who is of advanced age; and

(b) establish, in each urban area in his electoral district, at least one advance polling station with level access.

The Commission recommends a new statutory requirement for an advance poll to be accessible where that is feasible.

Voting is also done at the returning officer's headquarters during a Provincial election because that is where the special poll is located. Access to the returning officer's headquarters is therefore desirable for those who wish to vote at the special poll, and it is also desirable for those who wish to obtain transfer certificates because they are disabled. A returning officer can leave the office to go to the street to meet a person who is seeking a transfer certificate but it is not possible to carry the ballot box of the special poll to the street. For the convenience of voters, the returning officer's headquarters should be accessible. However, this is not always feasible. Some returning officers prefer to use their own homes and other returning officers say that office space can be difficult to find on short notice so that often second floor facilities must be used. Members of the Commission recommend a statutory statement regarding the desirability of accessible offices for returning officers but a mandatory requirement should not be enacted.

Recommendations

8. The Elections Act should require the accessible poll for disabled persons to be conveniently located.

9. The Elections Act should be amended to require the advance poll to be located at a place in a building that provides convenient access for disabled electors where that is feasible.

10. The Elections Act should be amended to require the returning officer's headquarters to be accessible to disabled persons where that is feasible.

PROCEDURE WHERE ELECTORS OMITTED FROM LIST

Electors who are omitted from the preliminary printed list, and who do not have their names added during the revision sittings, may still vote on ordinary polling day.

In cities, they appear before the revising officer who sits in the returning officer's headquarters on ordinary polling day. If the revising officer qualifies the person as an elector, the elector votes immediately at a poll set up in the headquarters for that purpose.

In towns of more than 5,000 people, a person omitted from the list goes to the revising officer at the returning officer's headquarters and obtains a certificate which he or she takes to the polling station where his or her name should have appeared. In this way, poll officials who may know their neighbours can challenge a suspicious person.

In rural polls, a person omitted from the list goes directly to the polling station where he or she should have been listed and is sworn in there.

The voting procedure for electors whose names have been omitted from the list of electors is not consistent. Section 114(1) of the Elections Act provides that a person omitted from the list in a rural area may vote if he or she "swears to and signs Form 47 in the Poll Book". Subsection 114(2) makes no reference to the completion of Form 47 by an elector omitted from a list of electors in the city. Subsection 114(3) provides that a person omitted from the list in a town having a population in excess of 5,000 persons may vote if he or she "signs Form 47 in the Poll Book". In every case, an elector omitted from the list should be required to swear to an oath in Form 47 or to like effect.

The abolition of the vouching requirement in both urban and rural polls has given rise to concerns about potential abuse. Therefore, a deputy returning officer should be permitted to ask a person, whose name is not on the official list of electors, to provide sufficient evidence to satisfy the deputy returning officer that the person is entitled to vote. This could require production of identification papers showing an address in the polling division. Instructions to deputy returning officers should contain advice regarding the procedure a deputy returning officer may follow when deciding whether a person has presented satisfactory evidence that he or she is entitled to vote.

Recommendations

11. References to Form 47 in each of the subsections contained in Section 114 of the Elections Act should be consistent and should require a person to swear to an oath in Form 47 or to like effect.

12. The Elections Act should be amended to permit a deputy returning officer to ask a person, whose name is not on the official list of electors, to provide sufficient evidence of the person's identification and address to satisfy the deputy returning officer that the person is entitled to vote.

SURPLUS CAMPAIGN FUNDS

Section 164L of the Elections Act requires Official Agents to account for the surplus of contributions for which tax receipts are issued over election expenses actually incurred. The Section does not take into account the amount of reimbursement from public funds which is returned to the Official Agent of a candidate after the election expense report is filed. The purpose of this Section appears to be to ensure that public funds made available for election expenses are used for that purpose, or transferred to an organization of a recognized party in the candidate's electoral district, to the Official Agent of a recognized party in the Province, or to the Minister of Finance. If this purpose is to be achieved, the Section should take into account the reimbursement of candidates.

Recommendation

13. Section 164L of the Elections Act should be amended to require an Official Agent to take into account reimbursement from public funds in the calculations to determine whether there is a surplus of contributions for which tax receipts were issued.

CONDUCT OF POLLING STATIONS

One of the political parties recommended to the Commission that officials at an advance polling station should arrive and begin to set up tables, chairs, voting compartments and other necessary facilities at the polling station at least thirty minutes before the poll is scheduled to open. At present, Section 99 of the Elections Act requires the deputy returning officers and poll clerks to be there during the fifteen minutes prior to the opening of the poll. This requirement applies in the case of an advance polling station (Section 131) and a special poll (Section 138G). Fifteen minutes does not appear to be sufficient time when considering the checking of ballots, seals and the ballot box by agents for the candidates. Therefore, members of the Commission conclude that Section 99 should be amended to change fifteen minutes to thirty minutes.

Section 109 of the Elections act permits voting by a bedridden patient. Where a polling station has been established in a "sanitarium, a home for the aged, a licensed nursing home, a chronic hospital or similar institution for the care and treatment of tuberculosis or other chronic diseases" voting may be suspended and the ballot box and other election materials may be carried from room to room in the institution so the bedridden patients may vote.

Concern has been expressed that the institutions to which this Section applies are limited to institutions "for the care and treatment of tuberculosis or other chronic diseases". It was recommended that the Section should be clarified by adding reference to homes for special care. While members of the Commission are of the opinion that the reference to "a home for the aged" and a reference to "a licensed nursing home" are not modified by the words "for the care and treatment of tuberculosis or other chronic diseases", the matter should be beyond debate and therefore the Commission recommends an amendment to clarify this Section.

Recommendations

14. Section 99 of the Elections Act should be amended to require polling officials to arrive at the polling station thirty minutes before the opening of the polling station.

15. Section 109 of the Elections Act should be amended to make it clear that, where a polling station is established in a home for special care, the voting may be suspended and the ballot box and other election materials may be carried from room to room to permit voting by bedridden patients.

ADMINISTRATIVE PROCEDURES

Election expense limits were first enacted in Nova Scotia in 1969. Since that time, official agents for candidates at all general elections and by-elections have been required to submit expense reports to the Chief Electoral Officer. Following the general elections in 1970, 1974 and 1978, the Chief Electoral Officer arranged for these reports to be audited by a firm of Chartered Accountants and, where additional information was necessary, the Chief Electoral Officer requested the information from the official agent.

In 1981, the Legislature adopted a program to provide tax credits for political contributions. As part of the implementation of this program, each candidate during the general election held on October 6, 1981, was required to appoint an auditor to review the election expense report prepared by his official agent. As a result, the Chief Electoral Officer reported that every one of the election expense reports submitted to his office was in satisfactory form.

However, official agents and auditors alike have indicated that guidelines for completing election expense reports should be expanded to answer questions which arose

in 1981. The Chief Electoral Officer told the Commission that he has received a number of suggestions from official agents and auditors. These will be incorporated in a new guide for official agents and the Chief Electoral Officer will ask the members of the Election Commission to review it before it is published.

It was also suggested that the Chief Electoral Officer should arrange training sessions throughout the Province where official agents can receive instructions regarding their duties. Members of the Commission suggest that approximately five sessions at different places throughout the Province would be sufficient. These sessions should be held between the 22nd and the 18th days before polling day, when most nomination meetings have taken place. Training sessions during the election would encourage the creation of proper record keeping systems. Another series of sessions about one month before the report filing deadline might also be of assistance to official agents who would then be completing their reports.

Members of the Commission suggest that official agents should be encouraged to contact the office of the Chief Electoral Officer for assistance at any time during the election or afterwards. The Chief Electoral Officer indicated that his office would be able to handle an increased number of inquiries of this sort.

The election expense report form used during 1981, like the form used in previous elections, does not provide for the date of receipt by the returning officer to be marked on it. Therefore, it is not conveniently possible to determine whether the form was filed on time. The date of filing could be of crucial importance to a prosecution at some future time, and therefore the members of the Commission recommend that the form should be amended by providing a place for the returning officer to mark the date of receipt and confirm it with his or her signature.

Members of the Commission wish to note that instructions provided to deputy returning officers, both in the form of the handbook and in the form of classes of instruction conducted by returning officers, have generally provided for the orderly conduct of polling stations. Two suggestions have been received by the Commission which would, in our view, improve this situation. At the present time, deputy returning officers receive a payment for attendance at a course given by the returning officer. We recommend that poll clerks attend the course and receive the same payment for doing so. We also recommend that not more than two representatives of each of the candidates should be invited to attend the same instruction meeting. In this way, all persons concerned with the operation of the polling

station will know what instructions the returning officer has given.
If everyone is satisfied with the instructions and knows what they are, few problems should arise at polling stations.

Recommendations

16. A new guide for use by official agents should be prepared by the Chief Electoral Officer.

17. Increased use should be made of courses of instruction for persons with election duties.

MATTERS REQUIRING FURTHER STUDY

Several matters discussed at Commission meetings have not been resolved to the satisfaction of the members of the Commission. We think these matters are deserving of further study and we would welcome comment or advice from any person who may wish to make a submission. The issues under consideration are briefly described below.

Prohibited Activities on Polling Days

Section 178 of the Elections Act creates certain offences on ordinary polling day. The Section provides:

> Everyone is guilty of an offence, who, during the hours of polling on ordinary polling day
>
> (a) supplies, carries or wears any flag, ribbon, emblem, badge or like favor with the intent to distinguish the user as the supporter of a candidate or political organization;
>
> (b) supplies, carries or uses a loud speaker, public address system, flag or banner with the intent that it be used to support a candidate or political organization;
>
> (c) posts or displays in or within two hundred feet of a polling station or the building in which a polling station is situate, any literature, emblem, ribbon, flag, banner, card, bill, poster or device that supports a candidate or political organization; or
>
> (d) organizes or participates in a parade or demonstration that supports a candidate or political organization.

These offences relate to "ordinary polling day" and do not relate to the two days on which the advance poll is conducted or the three days on which the special poll is conducted. Questions have arisen regarding the placement of posters or other such material near advance polling stations or special polling stations. The issue is, should offences be created respecting activities on the other polling days?

Mentally Disabled Disqualification

The disqualification of electors based on mental disability is set out in Section 26 of the Elections Act which disqualifies "a person who is legally restrained of his liberty of movement or deprived of the management of his property by reason of mental illness". This standard is based, in part, on the former practice of certifying patients to psychiatric facilities, and does not really take into account the new thinking which encourages patients to be voluntary patients. The "voluntary" and "involuntary" status in psychiatric facilities is based less on the degree of the person's mental disability and more on whether the person, whatever his or her mental state, is willing to remain in the facility. If he or she is unwilling to remain and is a danger to himself or herself or others, he or she may be classified as an "involuntary" patient and prevented from leaving the facility.

All election laws in Canada use a similar test for disqualification based on mental disability. The time may now have come for a review of this test. Perhaps the disqualification should be eliminated from the statute altogether and nothing substituted. Perhaps a new test should be formulated based on the person's capacity to understand the voting process.

Continuous Electoral Roll

There are two principal advantages to be achieved by using a continuous electoral roll:

(1) Enumeration would not have to be done during an election and the election period would therefore be shortened by two weeks or so.

(2) If adequate resources and equipment are committed to the process of maintaining a continuous electoral roll, more accurate lists of electors would be available.

Lists of electors which are prepared periodically in advance of elections may be described as "permanent lists" or as "continuous electoral rolls". A permanent list is prepared during a stipulated time for registration and is closed at the end of that time. It is the type of list used

in most western European countries, including the United Kingdom. It tends to get out of date rather quickly. The "continuous electoral roll" is one where additions, corrections and deletions are allowed at any time up to a fixed date before election day and where revising during the election period may occur. This type of list is used in Australia.

Members of the Commission believe that the continuous electoral roll is the better of the two systems because some revising during an election period would be desirable. The establishment of a continuous electoral roll would almost certainly require use of computer storage and retrieval of information. The big question is whether it is feasible for such a system to be adopted in Nova Scotia at this time. Obviously a careful study of the cost is necessary before any recommendation can be made.

Auditors

During the 1981 election the Chief Electoral Officer extended the time for filing reports of expenses by candidates because there were not sufficient persons available to perform the audits within the time prescribed by the Act. Subsection 164K(3) of the Elections Act requires that an auditor be a public accountant licensed under the Public Accountants Act. At the present time, persons licensed as public accountants are almost all Chartered Accountants. The question is whether the qualifications of an auditor can be broadened to include other persons.

Canadian Charter of Rights and Freedoms

Section 3 of the Canadian Charter of Rights and Freedoms provides:

> Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.

Our Elections Act now disqualifies certain persons from voting (Section 26). The following persons are not entitled to be registered as electors:

(a) the Chief Electoral Officer;

(b) a returning officer;

(c) a Judge of the Supreme or County Court;

(d) a person undergoing punishment in a penal or reform institution; or

(e) a person who is legally restrained of his liberty of movement or deprived of the management of his property by reason of mental illness.

The qualifications for electors include a minimum age of eighteen years and a residence requirement of six months.

All of these restrictions in the Elections Act may be said to limit the rights of Canadian citizens to vote in an election of members of a legislative assembly. However, before determining that the provisions are contrary to Section 3 of the Charter, one must apply Section 1 which states:

> The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Perhaps the requirements of the Elections Act "can be demonstrably justified in a free and democratic society".

The Chief Electoral Officers throughout Canada have agreed among themselves to share information regarding the application of the Charter to election legislation. The Chief Electoral Officer of Nova Scotia has already brought two court decisions from other provinces to the attention of members of the Election Commission. We recommend a careful review of cases applying the Charter to election laws so that appropriate statutory or administrative changes can be made if they are necessary.

Halifax, Nova Scotia
February 16, 1983